(2)

No. 09-1413

In the

Supreme Court of the United States

HEATHER A. DAVIS,

Petitioner,

v.

BROUSE MCDOWELL, L.P.A. and DANIEL A. THOMSON,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF IN OPPOSITION

JAMES A. KING
Counsel of Record
BRYAN R. FALLER
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215
Telephone: (614) 227-2000
Facsimile: (614) 227-2100
JKing@porterwright.com

Counsel for Respondents

June 21, 2010

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001

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INTRODUCTION

Petitioner Heather A. Davis ("Davis") has presented no "compelling reason" for granting her Petition for a Writ of *Certiorari* ("Petition"). *See* Sup. Ct. R. 10. The Petition fails to demonstrate that the Federal Circuit's March 2, 2010 Opinion is in conflict with a decision of this Court or another Court of Appeals or that the Federal Circuit decided an important federal question that has not been settled. *See* Sup. Ct. R. 10(a)-(c). On the contrary, Davis's Petition centers primarily on the application of facts to questions of Ohio law that this Court need not address. The Petition should be denied.

Davis contends that the Federal Circuit's Opinion conflicts with precedent from this Court holding that removal of a case from state court to federal court can only be determined by the allegations in a "well-pleaded complaint." But Davis's sweeping position ignores the federal statute governing the procedure for removal, 28 U.S.C. § 1446. Section 1446(b) expressly provides that the grounds for removal may appear in an "amended pleading, motion, order *or other paper* from which it may first be ascertained that the case is one which is or has become removable." § 1446(b) (emphasis added). Here, Respondents removed Davis's legal-malpractice case from state court to federal court based on Davis's deposition testimony that her amended complaint implicated substantial questions of federal patent law under 28 U.S.C. § 1338(a). Citing the "other paper" of Davis's deposition transcript, Respondents timely removed the case to the District Court under Section 1446(b).

Moreover, Davis has waived the argument that she is now making. Her opposition to the Federal Circuit's consideration of her deposition testimony in affirming the removal is entirely procedural, not substantive. Under 28 U.S.C. § 1447(c), Davis was required to file a motion to remand with the District Court within 30 days after the notice of removal. She failed to file any such motion. Her Petition should, therefore, be denied.

Davis's argument that the Federal Circuit erred by asserting federal patent-law jurisdiction over a single state-law claim of legal malpractice is also without merit. Again, this issue does not present a compelling constitutional or federal statutory question, nor does it present a question over which the circuit courts are divided. The question, instead, is whether Davis stated a single claim or multiple claims of legal malpractice for purposes of federal patent-law jurisdiction under 28 U.S.C. § 1338(a). The Federal Circuit correctly found that Davis had raised at least two distinct malpractice claims, not alternative theories. The court then turned to the elements of legal malpractice under Ohio law, and held that Davis had to prove her inventions are patentable in order to establish proximate cause for one of her claims. Following this Court's decision in *Christianson v. Colt Indus. Oper. Corp.*, 486 U.S. 800 (1988), the Federal Circuit correctly concluded that Section 1338(a) jurisdiction existed over this one claim because her right to relief necessarily depended on resolution of a substantial question of federal patent law – that is, whether her inventions are patentable.

In short, Davis has failed to carry her burden of demonstrating any compelling reason for this Court to

grant her Petition. Accordingly, her Petition should be denied.

STATEMENT OF THE CASE

Petitioner Heather A. Davis filed this legal-malpractice action in January 2008 against the Akron law firm of Brouse McDowell, L.P.A. and a partner in that law firm, Daniel Thomson ("Thomson"), in an Ohio state court. Davis is an inventor who hired Thomson to prosecute patent applications for a website, search engine, and business that she believes she invented. Davis's original complaint claimed that Thomson was negligent because he missed the deadline for filing foreign patent applications under the Patent Cooperation Treaty ("PCT") for her inventions.

In May 2008, Davis filed an amended complaint in the state court. The amended complaint alleged that in addition to filing the PCT applications in an untimely manner, Respondents committed legal malpractice as a result of "other omissions." The amended complaint offered no details on what the "other omissions" were. But at her deposition, which was held within a few days after she filed the amended complaint, Davis described the "other omissions" to include alleged errors in Thomson's preparation and prosecution of her three U.S. patent applications.

Immediately after Davis's deposition, Respondents removed the case to the U.S. District Court for the Northern District of Ohio. Respondents' notice of removal invoked federal subject-matter jurisdiction under 28 U.S.C. § 1338(a) because adjudication of Davis's malpractice claims required resolution of,

among other things, the patentability of the inventions described in her U.S. patent applications. Since the issue of patentability presents a substantial question of federal patent law, the District Court had exclusive jurisdiction pursuant to Section 1338(a). Respondents cited Davis's deposition testimony as grounds for removal. Specifically, Respondents asserted that the transcript of her deposition constituted an "other paper" under 28 U.S.C. § 1446(b) that supported removal. Davis never opposed the removal or moved to remand the case to state court.

After extensive discovery and the filing of cross motions for summary judgment, the District Court entered summary judgment in Respondents' favor on all of Davis's malpractice claims. The District Court held that Ohio law required Davis to prove that her inventions were patentable in order to show proximate cause. Because Davis presented no evidence that her inventions were patentable, the District Court concluded that Davis's legal-malpractice claims failed as a matter of law.

Davis appealed to the U.S. Court of Appeals for the Federal Circuit. There, she argued for the first time that the District Court erred in relying upon her deposition answers as a basis for removal. She also argued that the District Court lacked subject-matter jurisdiction over her legal malpractice claims.

The Federal Circuit unanimously affirmed the judgment of the District Court. *Davis v. Brouse McDowell, L.P.A.*, 596 F.3d 1355 (Fed. Cir. 2010). The Federal Circuit held that the District Court properly exercised subject-matter jurisdiction over Davis's claim that Thomson committed legal malpractice in

prosecuting her U.S. patent applications. More specifically, Davis's theory of malpractice was that "but for" Thomson's negligence, she would have obtained U.S. patents for her inventions. The Federal Circuit correctly found that, under Ohio law, this theory required Davis to prove her inventions were patentable in order to show proximate cause. Since patentability is determined under federal patent law, the Federal Circuit held that patent law was a "necessary element" of one of her claims. The Federal Circuit, therefore, concluded that the District Court had jurisdiction under 28 U.S.C. § 1338(a).

REASONS FOR DENYING THE PETITION

After losing before the District Court, and then again unanimously before the Federal Circuit, Davis is now seeking to have this Court step in and resurrect a legal-malpractice case that should never have been brought. Her case was without merit then and it remains without merit now. The Court should deny Davis's Petition for two reasons. First, the Federal Circuit's Opinion does not conflict with a decision of this Court or another Court of Appeals, nor does it implicate an important question of federal law that should be settled by this Court. Second, this case does not present any important question of federal constitutional or statutory law, but rather raises issues of state law.

I. The Federal Circuit Properly Found That This Case Was Removable

A. The Federal Circuit's Reliance Upon Deposition Answers As A Basis For Removal Presents No Conflict

Davis's argument that the Federal Circuit erred in concluding that her deposition testimony can support removal ignores 28 U.S.C. § 1446(b). Section 1446(b) provides in relevant part:

> If the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant . . . of a copy of an amended pleading, motion, order, *or other paper* from which it may first be ascertained that the case is one which is or has become removable.

28 U.S.C. § 1446(b) (emphasis added). By the terms of Section 1446(b), courts may look to documents beyond the complaint in determining if a case is removable. "[I]n practice, the federal courts usually do not limit their inquiry to the face of the plaintiff's complaint, but rather consider the facts disclosed in the record of the case as a whole, in determining the propriety of removal. Section 1446(b) makes clear that this practice is correct." 14C CHARLES ALAN WRIGHT, ET AL., FEDERAL PRACTICE AND PROCEDURE § 3734, at p. 668 (4th ed. 2009).

While this Court has not directly addressed the issue, the Courts of Appeals that have – including the Sixth Circuit where the case originated – uniformly hold that a deposition transcript is an "other paper" for

purposes of Section 1446(b). *See Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 466 (6th Cir. 2002); *Huffman v. Saul Holdings Ltd. P'ship*, 194 F.3d 1072, 1078 (10th Cir. 1999); *S.W.S. Erectors, Inc. v. Infax, Inc.*, 72 F.3d 489, 494 (5th Cir. 1996). The Federal Circuit's Opinion is entirely consistent with these decisions.

Davis seeks to avoid Section 1446(b) by relying on case law from this Court holding that counterclaims or allegations made in anticipation or avoidance of a defense cannot be considered in determining whether an action is removable. *See Taylor v. Anderson*, 234 U.S. 74 (1914) (allegations in anticipation or avoidance of defenses); *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1 (1983) (same); *Louisville & Nashville R. Co. v. Mottley*, 211 U.S. 149 (1908) (same); *Holmes Group, Inc. v. Vornado Air Circulation Sys., Inc.*, 535 U.S. 826 (2002) (counterclaim). But these cases are inapposite. The Federal Circuit did not rely on counterclaims (there were none) or allegations made in anticipation or avoidance of a defense (there were none) to decide if Davis's case was removable. The Federal Circuit relied instead on the transcript of Davis's deposition testimony – an "other paper" under Section 1446(b) – to determine if removal was proper. (App. 8a-9a.)

What this Court's precedent actually makes clear is that Davis could not avoid removal by vaguely referring to "other omissions" in her amended complaint, as she did here, instead of detailing what those omissions were. "A plaintiff may not defeat removal by omitting to plead necessary federal questions in a complaint[.]" *Christianson v. Colt Indus. Oper. Corp.*, 486 U.S. 800, 809 n.3 (1988). It is immaterial that Davis is the "mistress of her

complaint." *See City of Chicago v. Int'l College of Surgeons*, 522 U.S. 156, 164 (1997). In *City of Chicago*, the Court held:

> ICS errs in relying on the established principle that a plaintiff, as master of the complaint, can choose to have the cause heard in state court. By raising several claims that arise under federal law, ICS subjected itself to the possibility that the City would remove the case to the federal courts.

Id.

Finally, Davis's challenge to the removal is too late. She waived the argument. Respondents relied upon Davis's deposition testimony as grounds for removal in their notice of removal. (App. 2b-3b.) If she believed that the removal was improper, she was required under 28 U.S.C. § 1447(c) to seek a remand within 30 days. *See* 28 U.S.C. § 1447(c) ("A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under Section 1446(a)); *Payne v. Brake*, 439 F.3d 198, 203 (4th Cir. 2006); *Phoenix Global Ventures, LLC v. Phoenix Hotel Assocs., Ltd.*, 422 F.3d 72, 75 (2d Cir. 2005); *Loftis v. U.P.S.*, 342 F.3d 509, 516-17 (6th Cir. 2003). Davis never moved to remand. Accordingly, she has waived the argument. For this reason alone, the Court should deny her Petition.

B. The Federal Circuit's Conclusion That Davis Asserted Multiple Claims For Relief, One Of Which Raised A Substantial Question Of Federal Patent Law, Is Consistent With Decisions Of This Court And The Other Circuits

The Federal Circuit held that Davis's amended complaint presented multiple claims for legal malpractice, as opposed to a single malpractice claim supported by multiple theories. One of those claims raised a substantial question of federal patent law, thereby providing for federal patent-law jurisdiction under 28 U.S.C. § 1338(a). The Federal Circuit's Opinion does not conflict with this Court's precedent. The Opinion also does not conflict with any other circuit court decision. Davis cites to only one decision to support her argument that a circuit conflict exists. That decision, however, did not address the issue at hand.

The Federal Circuit below followed this Court's decision in *Christianson*, 486 U.S. 800, to determine if one of Davis's malpractice claims presented a substantial question of federal patent law. (App. 6a-7a.) As part of that analysis, the Federal Circuit first determined whether Davis alleged multiple claims for legal malpractice or instead a single claim for legal malpractice supported by multiple theories. (App. 8a ("It is undisputed that Ms. Davis's allegations relating to the PCT applications do not raise any issue of U.S. patent law. Therefore, if Ms. Davis's complaint merely presents alternative theories, the district court did not have jurisdiction over this case.") (citing *Christianson*, 486 U.S. at 810).)

The Federal Circuit found that Davis's amended complaint presented at least two distinct claims for legal malpractice under Ohio law: (1) a claim based on Thomson's alleged failure to file the PCT applications on time, and (2) a claim based on Thomson's alleged negligence in preparing and prosecuting Davis's U.S. patent applications. (App. 8a-9a.) The court rejected Davis's argument that her amended complaint asserted only a single claim for legal malpractice supported by alternate theories. (App. 8a-9a.)

The Federal Circuit's decision does not conflict with this Court's precedent or the decisions of any other circuit. The Federal Circuit followed this Court's ruling in *Christianson* that what a plaintiff labels as one "count" or "cause of action" may encompass more than one claim. *See Christianson*, 486 U.S. at 810 ("Petitioners' antitrust count can readily be understood to encompass both a monopolization claim under § 2 of the Sherman Act and a group boycott claim under § 1."). The Federal Circuit's decision also is consistent with the Second Circuit, the only circuit with which Davis argues a conflict exists. *See Broder v. Cablevision Sys. Corp.*, 418 F.3d 187, 194 (2d Cir. 2005) (holding that "what a plaintiff presents as one 'count' may be understood to encompass more than one 'claim'").

In a last-ditch effort to persuade this Court that there are compelling reasons to grant the Petition, Davis suggests that the Federal Circuit's Opinion conflicts with the Second Circuit's decision in *In re DDAVP Direct Purchaser Antitrust Litig.*, 585 F.3d 677 (2d Cir. 2009). Davis has misread *DDAVP*. First of all, the Second Circuit in *DDAVP* did not even address whether a complaint asserted multiple claims for relief

or instead a single claim for relief supported by multiple theories. Rather, the parties seeking to invoke federal patent law jurisdiction – the defendants – argued that each of the four theories underlying the plaintiffs' antitrust claim presented a substantial question of federal patent law. *See id.* at 685. The defendants never argued that the plaintiffs' antitrust claim consisted of more than one distinct claim. The focus, instead, was on the theories supporting the claim.

Second, the principle of *Christianson* that the Second Circuit applied in *DDVAP* that jurisdiction under Section 1338 exists if "the plaintiff's right to relief necessarily depends on resolution of a substantial question of federal patent law," *Christianson*, 486 U.S. at 809 – is one that the Federal Circuit below also properly stated and followed. (App. 6a-7a.) Indeed, the Federal Circuit has continued to apply *Christianson* in a manner consistent with the Second Circuit's approach. *See ClearPlay, Inc. v. Abecassis*, 602 F.3d 1364, 1367 (Fed. Cir. 2010) (citing its ruling in *Brouse McDowell*, the court held that "[w]e have consistently applied [the] governing principles [of *Christianson*] to determine whether particular claims, including state law claims, can be said to arise under section 1338"). Thus, Davis's contention that a conflict exists between the Federal Circuit's Opinion below and the Second Circuit's decision in *DDVAP* is wrong.

In conclusion, the Federal Circuit's ruling that the amended complaint presented at least two separate malpractice claims does not conflict either with this Court's precedent or the Second Circuit's decision in *DDAVP*. Once again, Davis has offered no compelling

reason that would justify granting her Petition. The Petition should be denied.

II. This Case Is A Poor Vehicle For Reviewing The Questions Presented In The Petition Because The Case Raises Issues Of State Law

As a final matter, the Court should deny the Petition because it raises substantial questions of Ohio law. Under Ohio law, the "case-within-a-case" doctrine applies to the element of proximate cause in a legal-malpractice action when, like here, the plaintiff's theory of recovery depends on success in the underlying matter. *See Envtl. Network Corp. v. Goodman Weiss Miller, L.L.P.*, 119 Ohio St. 3d 209, 893 N.E.2d 173, 176-78 (2008). Under that doctrine, Ohio law requires the plaintiff to prove that she would have prevailed in the underlying matter "but for" her attorneys' negligence. *See id.* at 177-78.

Applying Ohio law, the Federal Circuit held that, in order to establish proximate cause, the case-within-a-case doctrine required Davis to prove that she would have received U.S. patents for her inventions but for Thomson's alleged negligence. (App. 11a ("The district court correctly determined that the case-within-a-case doctrine applies to Ms. Davis's legal malpractice claim.").) In other words, patentability was a necessary element of Davis's state-law malpractice claim. It is because Ohio law required Davis to prove the patentability of her inventions – a matter that by definition presents a substantial question of federal patent law – that jurisdiction exists under 28 U.S.C. § 1338(a). (App. 12a (citing *Envtl. Network*, 893 N.E.2d at 177-78).) *See Christianson*, 486 U.S. at 808-09.

Simply put, whether Davis's case was properly removed to federal court depends on whether Ohio law required her to prove the patentability of her inventions. That question centers on the requirements of Ohio law, not federal law. The Court should deny the Petition so that it does not have to address this state-law question.

CONCLUSION

For the reasons set forth above, the Court should deny the Petition for a Writ of Certiorari.

Respectfully submitted,

JAMES A. KING
Counsel of Record
BRYAN R. FALLER
PORTER, WRIGHT, MORRIS
& ARTHUR LLP
41 SOUTH HIGH STREET
COLUMBUS, OHIO 43215
Telephone: (614) 227-2000
Facsimile: (614) 227-2100
JKing@porterwright.com

COUNSEL FOR RESPONDENTS

APPENDIX

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Appendix 1: Notice of Removal, In the United States District Court for the Northern District of Ohio (Filed June 4, 2008) 1b

APPENDIX 1

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO EASTERN DIVISION

Case No._____
Judge_____
Magistrate Judge_____

[Filed June 4, 2008]

Heather Alisha Davis,	)
	)
Plaintiff,	)
	)
vs.	)
	)
Brouse McDowell, a Legal,	)
Professional Association, et al.,	)
	)
Defendants.	)
	)

NOTICE OF REMOVAL

Defendants Brouse McDowell, a Legal Professional Association, and Daniel A. Thomson, Esq. (collectively, "the Defendants"), hereby give notice of removal of this action from the Court of Common Pleas, Summit County, Ohio, to the United States District Court for the Northern District of Ohio, Eastern Division. Defendants file this Notice of Removal pursuant to 28

U.S.C. §§ 1331, 1338(a), 1441(a), and 1446. In support of this Notice, Defendants state as follows:

1. On January 14, 2008, Plaintiff Heather Alisha Davis filed this action against the Defendants in the Court of Common Pleas, Summit County, Ohio, captioned *Heather Alisha Davis v. Brouse McDowell, a Legal Professional Association, et al.*, Case No. 2008-01-0311. The Defendants received service of the Summons and Complaint on or about January 16, 2008. True and accurate copies of the Summons and the original Complaint are attached collectively as Exhibit A.

2. This case involves a claim for legal malpractice against the Defendants arising from their representation of Plaintiff in certain patent matters.

3. The case as pleaded by Plaintiff's original Complaint was not removable to this Court.

Removal Under 28 U.S.C. § 1338(a)

4. On May 23, 2008, Plaintiff filed an Amended Complaint. (Attached as Exhibit B.) In Paragraph 7 of the Amended Complaint, Plaintiff added a new allegation that the Defendants made "other omissions" that gave rise to her claims for legal malpractice. (Am. Compl., ¶ 7.) The Amended Complaint provided no facts describing what the alleged "other omissions" are.

5. The Defendants deposed Plaintiff on June 3, 2008. At her deposition, Plaintiff testified that the "other omissions" referenced in Paragraph 7 of her Amended Complaint included alleged errors in the

Defendants' preparation and prosecution of three separate United States utility patent applications. (Davis Deposition at 22-23, 161-62, 164-65, 199) (cited portions attached as Exhibit C.)[1] Specifically, Plaintiff testified that she alleges that the three United States utility patent applications that the Defendants prepared and prosecuted are incomplete. (*Id.* at 22-23, 161-62.) Plaintiff further testified that she alleges that the individual patent claims in each of the three United States patent applications are defective. (*Id.* at 164-65.) She also testified that she alleges that the individual claims contained in each patent application, as written, are not broad enough to provide adequate protection against competitors. (*Id.* at 165.)

6. It is now clear that Plaintiff's legal malpractice claims are grounded in part on her allegations that the Defendants were negligent in preparing and prosecuting her United States utility patent applications. Adjudication of her legal malpractice claims necessarily will require a resolution of, among other things, the patentability of her inventions and the scope of the claims in her United States utility patent applications. Her malpractice claims, therefore, raise a substantial question of federal patent law under 28 U.S.C. § 1338(a), over which this Court has exclusive jurisdiction.

7. The United States Court of Appeals for the Federal Circuit has held that state-law legal malpractice claims arising from the prosecution of

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[1] The cited portions of Davis's deposition are a from draft of the deposition transcript. The Defendants will file an official transcript once it becomes available.

domestic patents raise a substantial question of federal patent law under 28 U.S.C. § 1338(a). *See Immunocept v. Fulbright & Jaworski, LLP*, 504 F.3d 1281, 1285-86 (Fed. Cir. 2007); *see also Air Measurement Techs., Inc. v. Akin Gump Strauss Hauer & Feld, L.L.P.*, 504 F.3d 1262, 1266-70 (Fed. Cir. 2007).

8. Because Davis's malpractice claim arises under 28 U.S.C. § 1338(a), this Court has exclusive jurisdiction over her claim. *See* 28 U.S.C. § 1338(a) ("The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents . . . . Such jurisdiction shall be exclusive of the courts of the states in patent . . . cases."); *Immunocept*, 504 F.3d at 1284; *Air Measurement Techs.*, 504 F.3d at 1267.

9. Because this case arises under 28 U.S.C. § 1338(a), it is removable pursuant to 28 U.S.C. § 1441(a).

10. This Notice of Removal is filed within the time limits prescribed by 28 U.S.C. § 1446(b). First, it is filed within thirty days of the Defendants' receipt of Plaintiff's Amended Complaint. As stated above, the case as pleaded by Plaintiff's original Complaint was not removable to this Court. Her Amended Complaint, as she admitted at her deposition, now covers claims related to Defendants' preparation and prosecution of her United States patents. Second, this Notice is filed only two days after Plaintiff's deposition, when Defendants first learned that her claims arise in part from Defendants' preparation and prosecution of her United States patent applications. The deposition constitutes an "other paper" as that term is used in

§ 1446(b). *See Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 466 (6th Cir. 2002) (holding that deposition answers can constitute an "other paper" under Section 1446(b); *see also Haber v. Chrysler Corp.*, 958 F. Supp. 321, 326 (E.D. Mich. 1997) (explaining "it is well-settled that where a plaintiff makes a disclosure in discovery responses which reveals that a case is removable, the defendant has thirty days from that disclosure to remove").

Removal Under 28 U.S.C. § 1331

11. In addition to exclusive jurisdiction under 28 U.S.C. § 1338(a), this Court has concurrent jurisdiction under 28 U.S.C. § 1331. Plaintiff also claims that Defendants were negligent in failing to timely file three Patent Cooperation Treaty ("PCT") applications.

12. President Nixon submitted the PCT to the United States Senate for its advice and consent to ratification on September 12, 1972. The Senate gave its advice and consent on October 30, 1973. *See* H.R. Rep. No. 94-592, at 2 (1975), *reprinted in* 1975 U.S.C.C.A.N. 1220, 1221.

13. In 1975, Congress enacted amendments and additions to the Patent Act of 1952 in order to implement the PCT. *See* Act of Nov. 14, 1975, Pub. L. No. 94-131, 89 Stat. 685 (codified at 35 U.S.C. §§ 351 - 376). Additionally, the United States Patent and Trademark Office promulgated a number of rules to assist in Congress's implementation of the PCT. *See* 43 Fed. Reg. 20458 (May 11, 1978); *see also* 37 C.F.R. §§ 1.401 - 1.499.

14. At her deposition on June 3, 2008, Plaintiffs first disclosed that the late filing of the three PCT applications referenced in the Complaint and the Amended Complaint caused her to lose the "priority date" for her patents as bestowed by the PCT.

15. Resolution of this claim will require the Court to construe and apply the PCT and its implementing rules. The Court, therefore, has original jurisdiction over this case because it arises under a treaty and laws of the United States. *See* 28 U.S.C. § 1331 ("The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.").

16. This Notice of Removal on the basis of 28 U.S.C. § 1331 is likewise timely filed. The Defendants first learned that Plaintiff claims injury from losing the "priority date" under the PCT at her deposition on June 3, 2008.

17. Copies of all process, pleadings, and orders served on or known to the Defendants not previously referenced herein are attached collectively as Exhibit D.

18. The Defendants will give written notice of the filing of this Notice to Plaintiff as required under 28 U.S.C. § 1446(d).

19. A copy of this Notice of Removal will be filed with the Summit County Common Pleas Court as required under 28 U.S.C. § 1446(d).

WHEREFORE, Defendants Brouse McDowell, a Legal Professional Association, and Daniel A.

Thomson, Esq. hereby provide notice that said action is removed to the United States District Court for the Northern District of Ohio, Eastern Division, pursuant to 28 U.S.C. §§ 1331, 1338(a), 1441 and 1446, and that the Common Pleas Court of Summit County, Ohio shall proceed no further therein unless this case is remanded.

Respectfully submitted,

s/ James A. King
Robert W. Trafford (0024447)
James A. King (0040270)
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215-6194
Telephone: (614) 227-2000
Facsimile: (614) 227-2100
Email: rtrafford@porterwright.com
jking@porterwright.com

Of counsel:
Bryan R. Faller (0072474)
PORTER, WRIGHT, MORRIS & ARTHUR LLP
41 South High Street
Columbus, Ohio 43215-6194
Telephone: (614) 227-2000
Facsimile: (614) 227-2100
Email: bfaller@porterwright.com
Attorneys for Defendants Brouse McDowell, a Legal Professional Association, and Daniel A. Thomson, Esq.

* * *

[Certificate of Service Omitted in Printing of this Appendix]